

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAUL SANTIAGO,

Plaintiff,

Docket No.: 08CV3005(PAC-JCF)

ANSWER

-against-

JM HEAFORD LIMITED and
JM HEAFORD, INC.,

Trial by Jury Requested

Defendants.
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Defendant, JM HEAFORD, INC., by and through its attorneys, CASCONe &
KLUEPFEL, LLP, answering the Complaint, upon information and belief, states as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations of the Complaint as contained in the paragraphs thereof numbered "1", "2", "3", "4", "5", "6", "7", "8" and "9".

2. Denies in the form alleged each and every allegation of the Complaint as contained in the paragraph thereof numbered "11", leaving all conclusions of law and fact to the Court.

3. Denies each and every allegation of the Complaint as contained in the paragraphs thereof numbered "12", "13", "14", "15", "16", "17" and "18".

AS AND FOR AN ANSWER TO A FIRST CAUSE OF ACTION

4. The answering defendant repeats, reiterates and realleges each and every Answer to the allegations contained in the paragraphs of the Complaint thereof numbered "1" through "18" with the same force and effect as though set forth more fully herein at length.

5. Denies each and every allegation of the Complaint as contained in the paragraphs thereof numbered "20" and "21".

AS AND FOR AN ANSWER TO A SECOND CAUSE OF ACTION

6. The answering defendant repeats, reiterates and realleges each and every Answer to the allegations contained in the paragraphs of the Complaint thereof numbered "1" through "21" with the same force and effect as though set forth more fully herein at length.

7. Denies each and every allegation of the Complaint as contained in the paragraphs thereof numbered "23", "24", "25" and "26".

AS AND FOR AN ANSWER TO A THIRD CAUSE OF ACTION

8. The answering defendant repeats, reiterates and realleges each and every Answer to the allegations contained in the paragraphs of the Complaint thereof numbered "1" through "26" with the same force and effect as though set forth more fully herein at length.

9. Denies each and every allegation of the Complaint as contained in the paragraphs thereof numbered "28", "30", "31", "32", "33" and "WHEREFORE".

10. Denies knowledge and information sufficient to form a belief as to the truth of the allegations of the Complaint as contained in the paragraph thereof numbered "29".

11. Denies each and every allegation of the Complaint as contained in the paragraph thereof numbered "34", leaving all conclusions of law and fact to the Court.

FIRST DEFENSE

12. Any damages sustained by the plaintiff were caused by the culpable conduct of the plaintiff, including contributory negligence or assumption of risk, and not by the culpable conduct or negligence of the answering defendant.

SECOND DEFENSE

13. Plaintiff was under an obligation to mitigate his damages but failed to do so.

THIRD DEFENSE

14. That any verdict in the within action, for past, present and future medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part of or from any collateral source, in accordance with the provisions and limitations of §4545(c) of the CPLR.

FOURTH DEFENSE

15. Upon information and belief, in the event that a judgment is rendered against the answering defendants, it shall not be responsible for more than their proportionate share of liability pursuant to §1601, et seq. of the CPLR.

FIFTH DEFENSE

16. Any damages sustained by the plaintiff are as a result of a misuse of the product by the plaintiff or others.

SIXTH DEFENSE

17. Any damages sustained by the plaintiff are as a result of a subsequent substantial alteration or modification of the product by persons or entities over which the answering defendant had no control.

SEVENTH DEFENSE

18. Plaintiff has failed to join a necessary and indispensable party and therefore, this action should be dismissed.

EIGHTH DEFENSE

19. Plaintiff's action should be barred because plaintiff spoliated evidence to the prejudice of the defense.


NINTH DEFENSE

20. That at all times relevant herein, defendant utilized proper methods of design, manufacture and sale with respect to any product at issue herein, in conformity with the state of the art and the knowledge research of the scientific community.

WHEREFORE, the answering defendant demands judgment dismissing the Complaint, together with the costs and disbursements of this action, including attorneys' fees.

Dated: Garden City, New York
April 4, 2008

By:


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